IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3665 of 2004

Gobind Alwani .. Petitioner

V/s

Renu Alwani .. Respondent

Shri R.V.Govilkar with Anamika Malhotra for Petitioner

Mr. Prem Gidwani with Smt. Maya B. Idnani for Respondent

WITH

WRIT PETITION NO.6105 of 2005

Gobind Alwani .. Petitioner

V/s

Renu Alwani .. Respondent

Miss Prachi Tatake for the Petitioner

Mr. Prem Gidwani with Smt. Maya B. Idnani for Respondent

CORAM:S.R.SATHE,J.

DATED:9th Feb. 2007

JUDGMENT :-

1. Heard both the learned Advocates at length.

2. Rule, returnable forthwith.

3. The husband has filed the above mentioned two writ petitions against his wife.

4. In the first Writ Petition NO.3665 of 2004 he has challenged the order passed by the Judge, Family Court, Mumbai on the application filed by the wife for interim maintenance whereby the husband was directed to pay interim maintenance of Rs.20,000/- per month for wife and Rs.10,000/- per month for their third daughter Bhavana.

5. The second writ petition bearing Writ Petition NO.6105 of 2005 is filed against the order passed by the Judge, Family Court, Mumbai whereby Petitioner's request to permit him to withdraw the amount from his PF Account and SBI Account NO.24129 and his fixed deposits mentioned in his application Exh.22, was rejected.

6. It is an admitted fact that marriage of the Petitioner with Respondent took place on 15-5-1977 and out of the said wed-lock they have two sons and one daughter. Daughter Bhavana being youngest, born in 1985. It is the case of the wife that her husband i.e. Petitioner was all along harassing her and treating her

with cruelty and not providing the facilities and amenities as per his standard of living. He had also extra marital affairs and thus she was treated with cruelty. She, therefore, filed Marriage Petition for divorce on the ground of cruelty. She also filed an application for interim maintenance under Section 24 of Hindu Marriage Act. According to her she had no sufficient source of independent income so as to maintain herself and daughter. According to her, the Petitioner is having monthly income of about Rs.1,25,000/-. He is an International Life Insurance Consultant and Agent of Vita Insurance Co. Ltd., Zurich (Switzerland) and he is a very rich person leading a luxurious life. She therefore claimed interim maintenance of Rs.25,000/- per month for herself and Rs.15,000/- for her daughter Bhavana.

7. The application was strongly opposed by the husband. He contended that Petitioner’s parents are based in USA. They are very rich. As a result of their inducement the Petitioner’s wife is also accustomed to live luxurious life. She is a fashion designer and specialised herself in wedding dresses. She is having huge income of her own and his various investments. As against this he is not getting more than Rs.12,000/- per month. Though he is working as LIC agent he was not even in a position to complete the target filed by the Insurance Company. He, therefore, contended that wife is not in need of any

interim maintenance and he is not in a position to pay any separate amount by way of maintenance.

8. After hearing both the learned Advocates and considering the documents produced by both the parties the learned Judge, Family Court, Mumbai directed the husband to pay interim maintenance of Rs.20,000/- and Rs.10,000/- per month to wife and daughter respectively.

9. From the perusal of the record it appears that when petition was placed before the Court (Coram:V.C.DAGA,J) on 7-3-2006 following order was passed by the Court:

> "The petitioner undertakes to produce copies of the balance sheets of last five years along with income tax returns on the next date of hearing. Petitioner is also directed to disclose on oath all investments made by him in the movable and/or immovable properties including the fixed deposits, if any, as also the investments made in the name of his sister.
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> Stand order for one week."

10. Shri Govilkar, learned Advocate for the Petitioner submitted that the Petitioner has filed his affidavit and also produced letter issued by his C.A., wherefrom it is clear that the Petitioner has in fact not maintained any Balance sheet and as such there was no

question of Petitioner producing balance sheet. For this purpose he has also placed reliance on a the provisions of Section 44A of the Income Tax Act. He also submitted that Petitioner has produced the Xerox copies of his last 3 years Income Tax Returns and from perusal of the same it is clear that his income is not even Rs.12,000/- per month.

11. As against this, the learned Advocate for the wife submitted that husband has not disclosed his real income and he is in fact holding huge investment and property and is living luxurious life. He, therefore, submitted that there is no need to interfere with the order passed by the learned Judge, Family Court, Mumbai.

12. At the outset it must be mentioned that the right of a wife for maintenance is a incident of status or estate of the matrimony. Even Section 18 of Hindu Adoption and Maintenance Act has also laid down the rule relating to the personal legal obligation of husband to maintain his wife. However, it is true that Section 24 is even applicable to the husband and if it appears that wife is having sufficient income but husband is not having then necessary order can be passed by the Court having regard to the provisions of Section 24.

13. It must be mentioned that though the husband has contended that his wife is in fact having independent

source of income and she has huge investment, we find that he has not adduced any material to substantiate his contention.

14. As against this the wife has produced certain documents to support her version that the husband is a wealthy person. From the perusal of the reply filed by the husband to the wife's application for interim maintenance, it is very clear that he has not denied the wife's allegation that he is an International Life Insurance Consultant and Agent of Vitra Insurance Co. Ltd. Zurchi (Switzerland). The wife has also produced the Visiting Card of the husband from which it is very clear that the Petitioner husband is having his office at Colaba, Bombay. So, also at Manila i.e. at Ermnita (Philipphines) and one office at New York. It is the contention of the husband that this Visiting Card is of 15 years old. What is pertinent to be noted is that he has not at all stated that contents of the said Visiting Card are not correct or that he is not doing business from the addresses mentioned on the said Visiting Card. On the contrary, even from his own statement in the reply it is quite clear that even as on today he is doing business of LIC and that to mainly for NRI persons. He himself has stated that for his business he is very often required to go abroad. So, this itself shows that what sort of income the husband must be having.

15. It is an admitted fact that the Petitioner husband is having his own ownership flat which is well furnished and equipped with various electronic gadgets. Wife has specifically stated that her husband is even using silver cutlery. This is not denied by the husband. There are electronic and other articles such as laptop, Deck, VCR and TV and CD Player etc. in his flat.

16. We find that the husband has filed affidavit wherein he has stated "I do not have any investment either in the movable or immovable properties as on today." It must be noted that this affidavit has been filed by him in pursuance of the order passed on 7-3-2006. He was specifically directed to state on oath and give details about his moveable and immovable property as well as investment standing in his own name as well as in the name of his sister. Even then we find that Petitioner husband has filed such above mentioned evasive affidavit. The above mentioned statement of the Petitioner husband is in fact not true and correct. That statement means that as on today he is not at all having any moveable or immovable property. However, if we peruse the Income Tax Return filed by him then we find that for the year 2004-05 he has received bank FD interest of Rs.15052, bank interest Rs.14345/- interest on City bank Rs.8740/-. It obviously means that he is in fact having investment in fixed deposits. Naturally,

he was expected to give details of the said FDS and investments in his affidavit filed in pursuance of the order dated 7-3-2006. He was also expected to give details of the flat, which is immovable property but he has not done so. This itself shows that the Petitioner is in fact not disclosing his real income and even suppressing the same. A person having monthly income of only Rs.12,000/- or so cannot live in such luxurious way or in such flat. He cannot travel abroad for his business very often particularly when there is nothing on record to show that expenses with regard to such travel are met by the company. So, it appears that the Petitioner might have suppressed his real income while submitting the income tax return. It was tried to be argued on behalf of the Petitioner husband that this court may direct the Income Tax Department to carry out enquiry in this behalf. In my opinion, it is not at all necessary for this court at this juncture to give any such direction. Having regard to the material on record and considering the preponderance of probabilities I have no hesitation to hold that Petitioner husband is suppressing his real income.

17. It must be noted that the Petitioner at one stage submitted that his sister is depending on him. While at other stage he has said that investment of about Rs.2 lacs or so, which is standing in his name is in fact belonging to his sister. So, it is difficult to very

his contention in this behalf. So, this also suggests that the Petitioner's contention that he is not having income more than Rs.12,000/- per month cannot be relied upon.

18. It is an admitted fact that the Petitioner is having a PF account in which at present there is balance of Rs. 9 lacs and odd. Even according to him the said account has already matured. There is nothing on record to indicate that previously at any point of time he had withdrawn any amount from the said account. The very fact that though the period of 15 years had lapsed he did not withdraw the amount also suggest that he may not be in need of the said amount. This circumstance also indirectly indicates that the Petitioner is a wealthy person. Incidently it must be noted that though the husband has prayed that he be allowed to withdraw the amount from this PF account and SB account for which he is prohibited, it is not his say that he intends to withdraw the said amount so as to make the payment of interim maintenance out of the said amount. If it is so, then necessary order for withdrawal from that account can be passed.

19. Incidently, it must also be noted that when the above mentioned Writ Petition NO.3665 of 2004 was placed before this Court (Coram:D.B.Bhosale,J) for admission, initially on 29-4-2004, the learned Counsel for the

Petitioner husband on instructions of his client i.e. present Petitioner submitted that the Petitioner husband will deposit 50% of the arrears. It seems that in pursuance of the same accordingly he deposited amount of Rs.3,60,000/- in the Family Court, Bombay. There is nothing on record to indicate that he deposited the said amount by borrowing the same from someone else. So, it is very clear that it is only with a view to avoid the liability and responsibility of paying interim maintenance the Petitioner is trying to raise all false contentions.

20. In view of the above, I find that the orders passed by the learned Judge, Family Court on the above mentioned two applications i.e. application filed by the wife regarding interim maintenance and application filed by the husband regarding permitting him to withdraw the amount from PF and other SB Account in SBI are legal and correct. There is no error of law and as such there is no necessity to interfere with the said orders by exercising extra ordinary jurisdiction. Hence both the petitions are rejected.

. Rule discharged.

(S.R.SATHE,J.)